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MAY 24 2002

In re Application of
Gobert, et al.
Application No. 09/942,017
Filed: August 29, 2001
Attorney Docket No. PHFR 000090

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Communication" filed February 25, 2002. The petition will be treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181(a).

The petition is **granted**.

This application was held abandoned on December 10, 2001, after no reply was received to the Notice to File Missing Parts of Nonprovisional Application first mailed October 9, 2001. The notice set forth an extendable period for reply of two months from its mailing date and required the submission of a proper oath or declaration and the payment of surcharge for late filing of the same. On January 25, 2002, the Office mailed a "Cover Letter for Resending Correspondence" with the enclosed correspondence being the aforementioned notice. The letter of January 25, 2002, indicated that the period of time set forth for reply to the notice continued to run from October 9, 2001. The instant petition was then filed on February 25, 2002, in which petitioner maintains that the notice of October 9, 2001, was never received and provides manual and computerized docketing records as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

Petitioner appropriately responded to the Notice to File Missing Parts of Nonprovisional Application by filing a declaration complying with 37 CFR 1.63 and remitting the surcharge.

Certificate

MAY 28 2002

of Correction

H-1A-

The application file is being forwarded to Technology Center 2100 for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned, at (703) 305-0010.



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for Patent Examination Policy